

Town of Weare
ZONING BOARD OF ADJUSTMENT
15 Flanders Memorial Road
PO Box 190
Weare, NH 03281
Phone: 603.529.2250
Fax: 603.529.7527

**ZONING BOARD OF ADJUSTMENT
MINUTES
Tuesday December 6, 2011
FINAL COPY**

PRESENT: Jack Dearborn, Chairman; Forrest Esenwine, Member; Malcolm Wright, Member; Stu Richmond, Alternate; Elwood Stagakis, Alternate; Neal Kurk, Alternate; Chip Meany, Code Enforcement Officer; Sheila Savaria, Recording Secretary

GUESTS: Ginger Esenwine, Joel Sletten, Melanie Knox, Walter B. Knox III, Michael Dahlberg, Charles Cleary, Jerry Haynes, Art Siciliano

I. INTRODUCTION:

Chairman Jack Dearborn called this meeting to order at 7:30 pm at the Weare Town Offices and asked the members present to introduce themselves.

II. PUBLIC HEARINGS:

Case #0511 Continued	United States of America: Variance from Article 14-1, Lot Size Reduction 506 Mount Dearborn Road Tax Map 407-92 Residential Zone
----------------------	---

Elwood Stagakis, Stu Richmond, Malcolm Wright, Forrest Esenwine, and Jack Dearborn were appointed as voting members for this case.

Nobody was present to represent this case. Chairman Jack Dearborn moved to continue case #0511 until next month's meeting; Stu Richmond seconded. Discussion: Forrest Esenwine asked the Board to consider continuing the case indefinitely, until the parties are ready to have it heard. Chairman Dearborn asked Chip Meany to draft a letter to Craig Francisco to check on the status of this case to see if it would be ready for next month. Mr. Meany agreed. Elwood Stagakis, Stu Richmond, Forrest Esenwine, and Jack Dearborn voted in favor of continuing the case; Malcolm Wright abstained.

Case #0811	Roger Hardy Construction, LLC Special Exception from Article 19.10 Construction in an Aquifer Zone South side of Colby Road Tax Map 412-170 Industrial Zone
------------	--

Chairman Dearborn appointed Elwood Stagakis, Stu Richmond, Forrest Esenwine, Malcolm Wright, and himself as voting members.

Art Siciliano was the Land Surveyor for Roger Hardy on this case. The Board reviewed a letter from the Selectmen that said they had made a positive decision on the location of the old dump – an issue that had been brought up at previous meetings regarding this site. Mr. Siciliano also did test pits on the site of the building area and showed the Board plans including the location of the old dump. The plan is for 2 storage buildings with a total of 33 storage units. The balance of the property is developable, but housing is not possible without a variance. Since the site is in an aquifer overlay district, Neal Kurk

asked how they can be sure the people who rent these units don't store hazardous or toxic materials that can be a risk to the aquifer. The Board discussed the wording to avoid this situation, and make it a condition if the plans are approved. Mr. Siciliano read the 7 points on his application submitted to the Board for a special exception which is summarized here:

1. The specific site is an appropriate location for such a use in terms of overall community development because the site is zoned industrial and the intended use will be storage units. There will be no well or septic.
2. The proposed use will not adversely affect the neighborhood because the land on either side of this lot is zoned industrial and the land across the street is zoned RA. Also, there is a 100' buffer that must be maintained if abutting land is being used for residential use.
3. The proposed use will not be a nuisance or hazard to traffic or pedestrians because the use will be for storage units and renters will come and go at different times.
4. There will be no undue burden to the Town through the provision of basic Town services because the access road into the site will be privately maintained. Trash removal will be done privately and the Fire Department will easily be able to access the site.
5. Parking is not required for this facility because renters will come use their unit and leave the site.
6. A buffer is provided on the site that screens the neighbors from the proposed use.
7. No answer.

Chairman Dearborn closed the hearing at 8:00 pm. Stu Richmond moved to accept case #0811; Malcolm Wright seconded. Discussion: The Board agreed to add the following condition to the approval of case #0811: The property owner shall not permit, and shall be liable for, including remediation of adverse consequences of, the presence or storage of toxic and hazardous materials, or leachable wastes, as defined in sections 29, 29.10, 29.10.1, 29.10.2, 29.10.3, & 29.10.4 in the Weare zoning ordinances, on the property, and such prohibition shall be included in each leasing contract of a storage unit. All voted in favor.

Case #0911

Knox Family Trust
Variance from Article 24.10
Residential construction in a Commercial Zone
66 Gould Road
Tax Map 411-100

Chairman Dearborn recused himself from this case. Acting Chairman, Forrest Esenwine, appointed Neal Kurk, Elwood Stagakis, Stu Richmond, Malcolm Wright, and himself as voting members.

Stu Richmond moved to accept the application for case #0911; Elwood Stagakis seconded, all voted in favor.

Land Surveyor Mike Dahlberg presented this case. The Knox family live at 66 Gould Road, which is currently zoned commercial, but is used as residential. They are before the Board to ask for a variance to create a subdivision to give 5 acres of land to another family member so she can build a home. The house will be 380 feet off the road, and the land could be subdivided further in the future. Mr. Dahlberg said the proposed driveway will meet the slope requirements and that the lot does not lend itself to commercial properties. The land has been zoned commercial for many years and there has been no one interested in trying to develop it, so there will be no impact to public interest.

Mr. Dahlberg read the 5 points from his application submitted to the Board for a Variance which are summarize here:

1. The proposed residential lot will not be contrary to public interest because the lot is a reasonable and normal use that is undertaken in a majority of the Town of Weare and is not unusual or extraordinary. The proposed lot is in agreement with the Weare Zoning Ordinance Article 1, Section 1.1.
2. The proposed residential use will not be contrary to the spirit of the ordinance because it is

consistent with the ordinance and the house will be serviced by an on-site effluent disposal system. It will generate less traffic than a commercial use thus protecting the safety of abutters and will not adversely affect the character of the Town of Weare.

3. Justice will be done by granting this variance because the proposed use is not different than the majority of the neighborhood and is identical to that of the closest contiguous abutter. The loss of use by the applicant does not appear to be outweighed by any gain to the general public.
4. The proposed use should not have any demonstrable impact on the values of the surrounding residential or zoning properties.
5. Special conditions that distinguish this property from others are the soil types, slopes, drainage class, presence of wetlands, and ledge, that preclude viable commercial development on a majority of the parcel. Other lots in the area are flatter and have better soils that are better suited for commercial development.
 - i. The purpose of zoning this parcel commercial is to promote business development. The property is not well suited to commercial development, therefore no substantial relationship between the provisions of the ordinance and the property exists. It is our opinion that the property will not support substantial or feasible commercial development.
 - ii. The proposed use is reasonable in light of on-site conditions. A residential structure with the associated driveway and effluent disposal system can be easily constructed in a minimally invasive manner as opposed to a commercial development.

Approving Abutters:

Jack Dearborn, a neighbor on the western side of the property told the Board that there is a swale between his property and the property in question that provides adequate drainage. Mr. Dearborn said he has known the Knox's for many years and has always known they wanted their family around them. In the 1980's the area was restricted against building residential properties in the commercial zone, but Mr. Dearborn feels it is suitable for a single family dwelling. Mr. Dearborn is an approving abutter and would also be in favor of additional subdivisions if requested.

Disapproving Abutters:

Jerry Haynes of 21 B&B Lane, across the road in the industrial park, said he has had some issues with residential home owners near his property, and he feels there may be an issue in the future. He asked the Board to please consider not putting a residential property so close to industrial land again as it has caused problems in the past and they should think ahead to what could possibly happen.

Joel Sletten, a lot owner on Gould Road, in the industrial park, opposite the Knox property, also feels there have been recent problems with homeowners being so close to an industrial zone with sound issues, and also that there should be buffers in place to prevent that from happening again.

Mr. Stagakis and Mr. Wright both would like to have more information about the lots around the one that will be developed in order to make a decision. Mr. Esenwine said the other lots are not what the Board is considering, and if they are requesting to subdivide again in the future, the Board will consider it then. Mr. Dahlberg explained the map showing the slopes and soil properties to the Board and added that all the Board needs to know is that where the Knox's want to put the house is not a viable commercial property. Mr. Knox and his family understand buffers, and are aware of the uses across the street and that the empty lots in that industrial zone could be developed further.

Forrest Esenwine closed the hearing at 9:10 pm.

Malcolm Wright moved to accept *point 1*; Elwood Stagakis seconded. Discussion: Malcolm Wright commented that the purpose of separating the zoning is to separate areas that may not be compatible and the Board needs to be careful about rejoining them. He feels the mingling of uses may not work. Mr. Richmond added that the best use for that land is residential. Neal Kurk, Elwood Stagakis, Stu Richmond, and Forrest Esenwine voted in favor; Malcolm Wright was opposed. Approved 4-1.

Stu Richmond moved to accept *point 2*; Elwood Stagakis seconded. Neal Kurk, Stu Richmond, and Forrest Esenwine voted in favor; Malcolm Wright and Elwood Stagakis were opposed. Approved 3-2.

Stu Richmond moved to accept *point 3*; Elwood Stagakis seconded. Discussion: Mr. Richmond is in favor of building residential and said it would not be any different than how things are now in the area. Mr. Esenwine feels justice would be done by granting them the variance. Mr. Stagakis added that the Knox's did not use the opportunity to carry out their plans to subdivide in the time allowed after the zoning had changed. All members voted in favor. Approved 5-0.

Elwood Stagakis moved to accept *point 4*; Stu Richmond seconded. Discussion: Mr. Esenwine said putting a house on the property cannot diminish the value of surrounding properties, and Mr. Richmond thinks it will increase the values and will not impact the industrial values. All members voted in favor. Approved 5-0.

Stu Richmond moved to accept *point 5*; Forrest Esenwine seconded. Discussion: Mr. Esenwine commented that it is a commercial zone that does not lend itself to commercial development. Stu Richmond, Malcolm Wright, and Forrest Esenwine voted in favor; Neal Kurk and Elwood Stagakis were opposed. Approved 3-2.

All 5 points were passed and the variance was granted. Jack Dearborn resumed his position as Chairman.

III. OTHER BUSINESS:

21 B&B Lane, Discussion of request to un-table an appeal. Jack Dearborn stepped down as Chairman for this case and appointed Forrest Esenwine as acting Chairman. Mr. Esenwine appointed Elwood Stagakis, Stu Richmond, Malcolm Wright, Neal Kurk, and himself as voting members on this case. Mr. Esenwine said he has done some research on this case and there are still some things pending. There has been no new information to change their decision and they are looking for guidance from the court.

Forrest Esenwine moved to allow this matter to remain on the table and not have a further hearing on it until final disposition of the two pending related appeals. Said matters being Graves vs. The Town of Weare Planning Board, (#216.2010, CB 857), and Graves vs. The Town of Weare ZBA, (#216.2011, CB517). Malcolm Wright seconded the motion and all members voted in favor. The case will remain on the table and will not be reheard until the court cases are complete. Jack Dearborn returned as Chairman.

Elwood Stagakis questioned an error in the ordinance that is carried on throughout the document. In section 24.4, special exceptions, section 6.1.4 is quoted. Mr. Elwood moved to get permission from the Board to go the Planning Board to point out the clerical errors; Neal Kurk seconded. Mr. Wright does not feel it is necessary to make this motion, and Mr. Kurk suggests marking up the errors and giving it to the Planning Board to correct. The motion and second were retracted.

Minutes: Forrest Esenwine moved to accept the 2nd draft copy of the November 1, 2011 minutes, as amended; Stu Richmond seconded. All voted in favor.

IV. ADJOURNMENT:

As there was no other business to come before the Board, Forrest Esenwine moved to adjourn at 9:40 pm; Stu Richmond seconded, all voted in favor.

Respectfully Submitted,

Sheila Savaria
Recording Secretary